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In the Supreme Court of the United States

October Term, 1963

In the Matter of Quincy Columbia Basin Irrigation District

and

In the Matter of the South Columbia Basin Irrigation District

for the

Judicial Examination, Approval and Confirmation of Amendatory Repayment Contracts

No. 825

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR RESPONDENTS IN OPPOSITION

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STATEMENT OF THE CASE

Respondents are irrigation districts of the State of Washington which in 1945 contracted with the United States for the construction of irrigation and drainage works to serve the lands on the Columbia Basin Project and to repay a portion of the costs thereof. Subsequently, the need arose to amend these original contracts, primarily in order to capitalize, as construction costs, certain costs of drainage works which under the original contracts had become repayable annually as operation and maintenance charges. Consequently, amendatory contracts with the United States were negotiated by Respondents. These amendatory contracts were then submitted to the vote of the district electorates as required by RCW 87.03.200 and were overwhelmingly approved.

This proceeding is a special statutory action prescribed by Washington statute (RCW 87.03.780) for the judicial examination, approval, and confirmation of the district's **proceedings** authorizing the execution of these amendatory contracts and of the contracts themselves. In the proceedings in the state courts, petitioner's primary premise was "the right of farmers to withdraw from (the) district prior to election, and the necessity of notice thereof." (Appendix C of Petition). This contention, among others, was rejected by the Washington Supreme Court.

ARGUMENT IN OPPOSITION TO GRANTING WRIT

1. Question presented for review not previously raised in state courts.

(a) The question presented for review is stated by Petitioner as follows:

> "When a reclamation project repayment contract between a State Irrigation District and the United States, has been 'confirmed' by a state court of competent jurisdiction, in accordance with the requirements of 43 USC 511, may such repayment contract be thereafter summarily revised and amended by the parties alone, without further reference to said court?"

(b) Supreme Court Rule 23 (f) requires the Petitioner to specify in the statement of the case the manner in which the federal question sought to be reviewed was raised. Petitioner attempted to comply by setting forth in Appendix E of the Petition certain portions of the pleadings. A reading of Appendix E makes it apparent that the question sought to be reviewed was not raised in the state court.

(c) Rule 23 (f) requires the Petitioner to set forth the way in which the question sought to be reviewed was passed upon by the court of first instance and also by the appellate court. The Petition omits this requirement, obviously for the reason that the alleged federal question relied on was not presented to the lower courts. A reading of the State Supreme

Court's decision discloses that this question was neither considered nor ruled upon by the state courts. (Appendix C of Petition).

(d) The question as presented by Petitioner is presented for the first time in their Petition for Writ of Certiorari. Where the question sought to be reviewed was not raised in the state court proceeding, it is not open in proceeding on writ of certiorari, **Ellis v. Dixon,** NY. 1955, 75 S. Ct. 850, 349 U.S. 458, 99 L.Ed. 1231, rehearing denied 76 S. Ct. 37, 350 U.S. 855, 100 L. Ed. 759.

2. No federal question or right under federal statute involved.

Rule 19, Rules of Supreme Court, provides that review on writ of certiorari is not a matter of right, but of sound judicial discretion, and that a federal question of substance must be involved. In addition, 28 USC 1257(3) provides that final judgments rendered by the highest court of a state may be reviewed by certiorari where "any title, right, privilege, or immunity is specially set up or claimed under the . . . statutes . . . of the United States."

(a) 43 USC 511 does not raise such a federal question or create a right in the Petitioners. Petitioners, in an effort to raise a federal question, cite the following portion of 43 USC 511 as the basis for a right claimed under this statute:

". . . no contract with an irrigation district shall

> be binding upon the United States until the proceedings on the part of the district for the authorization of the execution of the contract shall have been confirmed by a decree of a court of competent jurisdiction . . ."

This statute clearly does not operate to vest in Petitioners any rights under the terms of a repayment contract itself. The statute has no reference to the terms of a contract, but is clearly limited to "the proceedings on the part of the district for the authorization of the execution of the contract." Thus, confirmation under this statute deals only with procedures authorizing the execution of the contract and not with the contract's terms. Consequently, this statute has no relation to repayment contract terms and revision of terms which is the basis of Petitioner's writ. Also, the amendatory contract making the revisions which the Petitioners are referring to, did not involve a payment to the United States or in any way affect the district's repayment obligation to it. In addition, the statute is solely designed for the protection of the United States and its security. Before undertaking the construction of irrigation works, the United States, like a bondholder lending money for the construction of works, must be assured of repayment of the loan by the district and by the lands benefited. Thus, the statute provides for the confirmation of the proceedings on the part of the districts for the authorization of the execution of the contracts to assure the United States that they are authorized to enter into them. This procedure, of course, is de-

signed solely to benefit the United States—not the Petitioners.

It should also be noted that Congress has not set up in this statute or elsewhere any standards to test whether "the proceedings on the part of the district for the authorization of the execution of the contract shall have been confirmed . . ." The standards and machinery for such proceedings are necessarily covered by state statute. Revised Code of Washington 87.03.200 and 87.03.795. No one can have a vested right in any particular procedure and a court decree confirming and finding that the required procedure has been followed in connection with the authorization of a contract to satisfy the requirements of 43 USC 511, does not assure anyone claiming a right under that contract that the same procedure will be followed in connection with a subsequent amendment thereof. For example, and for illustrative purposes only, the state eliminated the requirement of posting notices in connection with district elections to authorize bond issues and repayment contracts last year by Chapter 63, Section 2, Laws of Washington, 1963; hence, they will no longer be posted as a part of the election procedure in repayment or amendatory repayment contracts. However, if Petitioners' theory was correct, the notices would still have to be posted in any election on an amendatory repayment contract with the United States where the original election procedure has been confirmed by a court to satisfy the requirements of 43 USC 511 in connection with the original

repayment contract. We submit that such would not be the case with respect to those notices or the one the Petitioners are contending should have been given merely because the former procedures had been confirmed by the courts under statute in connection with the original contracts. As irrigation districts are creatures of state law, no federal question can be involved in the procedural requirments of state law in contract confirmation proceedings.

(b) Petitioners further attempt to raise a federal question by citing 16 USC 835a(e), (ii) as one of the statutes involved. This statute merely authorized (on the part of the United States) the inclusion of a provision in a repayment contract permitting withdrawal of land within a specified time. Any question arising from such a contract provision must necessarily involve only a matter of the interpretation of a contract provision under state law.

The full text of 16 USC 835a(e) (ii) provides:

> (e) **Each district contract may include provisions**
>
> (ii) That, without compliance with other provisions of State law for the exclusion of lands, lands may be withdrawn from the district by filing a written notice of withdrawal with the district board on or before such date fixed by such board between a date ten days after the official notice of the election on the contract between the United States and the district and the date of such election. The date limiting the time of such filing shall be announced in the official notice of the proposed election, and lands for which such notice

> is filed shall be deemed excluded from the district for all purposes as of the time of such filing.

The identical provisions were contained in State Statute, Chapter 275, Subsection 5(d), Laws of Washington, 1943.

It is obvious that the above provisions were not self-executing, but to be effective had to be included in the district's contract. Whether or not it would be included in the contract was left up to the parties thereto. In the original contracts executed in 1945, the matter of withdrawal was provided for in Article 40 thereof reading as follows:

> "40(a). Lands within the District prior to the District election with respect to this contract may be withdrawn therefrom on compliance with the provisions of Subsection 5(d) of Chapter 275 of the Laws of Washington, 1943.
>
> 40(b). Lands so withdrawn shall not be entitled thereafter to receive water from, through or by, means of the irrigation system so long as they remain in private ownership."

The question whether Petitioners have a right of withdrawal hinges solely on an interpretation of this contract provision. This is because 16 USC 835a(e)(ii) does not prescribe and require withdrawal, but only authorizes (insofar as the United States is concerned) that the matter of withdrawal may be covered by a contract to which it is a party. Thus, the matter of withdrawal stem from and solely calls for an interpretation of this contract provision. This matter was presented to the Supreme Court of the State of Wash-

ington which concluded that the right of withdrawal was only applicable to withdrawals before the 1945 contracts were signed. (Appendix C of Petition). It is submitted that interpretation of a provision of contract is not a federal question, and this is the rule even when the federal government is a party to such contract. **Schatte v. International Alliance**, 70 F. Supp. 1008 (D.C. Cal.); **Salyer Land Company v. County of Kings**, 285 F 2d 481 (9th Cir. 1960).

Even if 16 USC 835a(e) (ii) were to raise a federal question, it has been repealed by Public Law 87-728, 76 Stat. 677 (October 1, 1962). Therefore, the question, even if it had been a federal one, "is therefore not of public importance". **District of Columbia v. Sweeney**, 310 U.S. 631 (1940), 84 L.ED. 1402.

Identical statutory language was adopted by the Washington State Legislature. Subsection 5(d) of Chapter 275, Laws of Washington, 1943. This law was also repealed. Chapter 3, Laws of Washington, 1963. The issue of the right to withdraw land from the irrigation districts was raised in the state court and decided against the Petitioners, and involved no federal question.

3. Federal question, if any, not one of substance.

(a) Rule 19(a), Rules of Supreme Court, contemplates a review on writ of certiorari only in those cases where a state court has decided a federal question "of substance". It is doubtful if a state court

decision affirming contract proceedings in connection with contracts between respondent irrigation districts and the United States under the applicable provisions of state law, gives rise to any "special or important reasons" for review by the United States Supreme Court as required by Rule 19. "Special and important reasons" relating to the granting of certiorari, refer to problems beyond the academic or episodic, especially where issues involved reach constitutional dimensions. **Rice v. Sioux City Memorial Park Cemetery,** U.S. Iowa 1955, 75 S. Ct. 614, 349 U.S. 70, 99 L. ED. 897.

(b) The main issue raised by Petitioners in state court has been the interpretation of RCW 89.12.050 and 16 USC 835a(e) (ii) relating to right of withdrawal, and whether Article 40 of the 1945 repayment contract based on these statutes gave landowners a vested right of withdrawal which they could not be deprived of by the parties to the contract through a subsequent amendment thereo. Since this issue involves solely a matter of contract interpretation, this would not present a federal question even if the United States is one of the contracting parties. **Schatte v. International Alliance,** 70 F.Supp. 1008 (D.C.Cal.); **Salyer Land Company v. County of Kings,** 285 F.2d 481 (9th Cir. 1960). On the other hand, even if the issue involves interpretation of 16 USC 835a(e) (ii) and hence a federal question, it is doubtful if such an issue would involve a question of substance, especially as the statute in question is now repealed. **District of Columbia v.**

Sweeney, Supra. As succinctly stated by the Supreme Court of the State of Washington:

> "In summary, we find the situation to be as follows: The 1945 contracts provided for the withdrawal; 1951 contracts, as amended, eliminated the right; the contracts now under consideration further eliminated it; and, finally, the statutes, 76 Stat. 677, supra, and Laws of 1963, Chapter 3, supra, have eliminated the withdrawal provisions." Appendix C of Petition.

4. Judgment of state court not dependent on federal question.

(a) A judgment resting on grounds adequate to sustain it, independent of any federal question, is not reviewable even though the state court actually decided the federal question adversely to the party by whom the review is sought. 36 C.J.S. Federal Courts, Section 244.

(b) Assuming that a federal question was presented in the lower courts, adequate independent non-federal grounds exist to sustain the judgment. The Petitioners in the lower court relied primarily on the alleged failure of respondent districts to give them notice of the right to withdraw their lands from the districts. This contention was disposed of by the Washington State Supreme Court on valid grounds quite apart from any federal question. (Appendix C of Petition). The applicable law in this situation is stated as follows:

"This Court from the time of its foundation has

adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds . . . The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitation of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." **Herb v. Pitcairn,** Ill., 65 S.Ct. 459, 463, 324 U.S. 117, 89 L. Ed. 789.